

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL JOSEPH YOUNG,

Plaintiff,

v.

JEFF LYNCH, et al.,

Defendants.

No. 2:22-cv-0487 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. §1983. On screening plaintiff's complaint, this court found plaintiff stated cognizable Eighth Amendment claims against defendants Giardino, Sotelo, and Bell for excessive force and a cognizable Eighth Amendment medical claim against defendant Giardino. (Apr. 28, 2022 Order (ECF No. 5).) This court further found plaintiff failed to state any other claims. Plaintiff was given the choice of proceeding on her cognizable claims or amending her complaint.

On May 31, plaintiff filed a first amended complaint. On screening, this court again found that plaintiff stated cognizable Eighth Amendment claims against defendants Giardino, Sotelo, and Bell for excessive force and an Eighth Amendment medical claim against Giardino. In addition, this court found plaintiff stated First Amendment retaliation claims against Giardino, Sotelo, and Bell. (July 6, 2022 Order (ECF No. 10).) Finally, this court found plaintiff failed to state claims against the remaining defendants. Plaintiff was again given the option of proceeding

1 on the cognizable claims or amending the first amended complaint. To inform the court of her  
2 choice, plaintiff was provided a form to fill out and return to the court within thirty days.

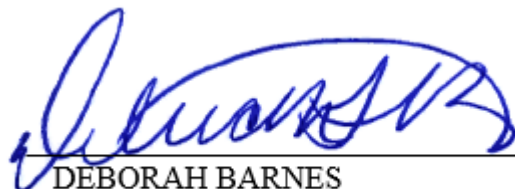
3 Thirty days have passed and plaintiff has not informed the court how she wishes to  
4 proceed, has not filed a second amended complaint, and has not otherwise responded to the  
5 court's July 6 order. Plaintiff was warned that if she failed to comply with the July 6 order, this  
6 court may recommend this action be dismissed. Local Rule 110 and Federal Rule of Civil  
7 Procedure 41 provide that a court may dismiss a case where a plaintiff fails to prosecute, comply  
8 with the rules, or comply with a court order. Plaintiff has failed to prosecute and comply with  
9 this court's order.

10 Accordingly, the Clerk of the Court IS HEREBY ORDERED to randomly assign a district  
11 judge to this case; and

12 IT IS RECOMMENDED that this case be dismissed without prejudice for plaintiff's  
13 failure to prosecute and failure to comply with court orders. E.D. Cal. R. 110; Fed. R. Civ. P. 41.

14 These findings and recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after  
16 being served with these findings and recommendations, plaintiff may file written objections with  
17 the court. The document should be captioned "Objections to Magistrate Judge's Findings and  
18 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
19 may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d  
20 1153 (9th Cir. 1991).

21 Dated: August 30, 2022

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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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